



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,841	08/18/2003	Andrew Silver	19018.00011	4077
7590 ANDREW SILVER 5830 SILVER SPUR FRISCO, TX 75034				
02/04/2009				
EXAMINER				
FRENEL, VANEL				
ART UNIT		PAPER NUMBER		
3687				
MAIL DATE		DELIVERY MODE		
02/04/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/642,841

Applicant(s)

SILVER, ANDREW

Examiner

VANEL FRENEL

Art Unit

3687

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/30/08.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 4-15 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-2, 4-15, 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Notice to Applicant

1. This communication is in response to the Amendment filed on 10/30/08, Claims 3 and 16 have been cancelled. Claims 1-2, 4-15 and 17-20 have been amended. Claims 1-2, 4-15 and 17-20 are pending.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-2, 4-15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al (6,844,893) in view of Ragsdale-Elliott et al (2002/0147647).

As per claim 1, Miller discloses a method restaurant customer management (See Miller, Col.5, lines 61-67 to Col.6, line 6), the system comprising: logging a customer unit into a restaurant pre-dining system with a mobile phone of the customer unit (See Miller, Col.8, lines 53-67 to Col.9, line 8); responsive to logging the customer unit to the restaurant pre-dining system, placing the customer unit on a waiting list for a table (See Miller, Col.3, lines 6-36); paging the mobile with a page that notifies the customer unit that the table is ready for the customer unit (See Miller, Col.6, lines 7-28); sending an interactive restaurant menu to the mobile phone (See Miller, Col.4, lines 20-49).

receiving at least one customer request of at least one service of restaurant from the mobile phone (See Miller, Col.8, lines 53-67 to Col.9, line 8).

Miller does not explicitly disclose uploading, by a post-dining system of the restaurant, a bill for the at least one service from a point of sale system of the restaurant to the mobile phone; and performing a customer self-checkout whereby payment for the at least one service is submitted by the customer unit via the mobile phone to the point of sale system.

However, these features are known in the art, as evidenced by Ragsdale. In particular, Ragsdale suggested uploading, by a post-dining system of the restaurant, a bill for the at least one service from a point of sale system of the restaurant to the mobile phone (See Ragsdale, Page 5; Paragraphs 0089-0090); and performing a customer self-checkout whereby payment for the at least one service is submitted by the customer unit via the mobile phone to the point of sale system (See Ragsdale, Page 4, Paragraph 0053).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the features of Ragsdale within the system of Miller with the motivation of providing a wireless maitre d' system and method which allows interactive two-way communication to selective restaurant personnel for expeditiously receiving, filling and finalizing patron orders in and outside of restaurants (See Ragsdale, Page 2, Paragraph 0016).

As per claim 2, Miller discloses the method wherein the customer unit is a single group of people (See Miller, Col.2, lines 21-24).

As per claim 4, Ragsdale discloses the method wherein the mobile phone is implemented in a wireless enabled handheld computer (See Ragsdale, Page 3, Paragraph 0036).

The motivation for combining the respective teachings of Miller and Ragsdale are as discussed in the rejection of claim 1 above, and incorporated herein.

As per claim 5, Ragsdale discloses the method further comprising: identifying by the pre-dining system the customer unit; managing, by the pre-dining system, queue assignment that includes the waiting list; updating, by the pre-dining system, a table management system, and storing, by the pre-dining system a least one customer data element in a database (See Ragsdale, Page 4, Paragraph 0054).

The motivation for combining the respective teachings of Miller and Ragsdale are as discussed in the rejection of claim 1 above, and incorporated herein.

As per claim 6, Ragsdale discloses the method wherein the restaurant customer management system wherein the restaurant comprises a dining system and wherein the interactive restaurant menu is sent to the mobile phone via the dining system (See Fig.2; Ragsdale, Page 4, Paragraphs 0047-0051).

The motivation for combining the respective teachings of Miller and Ragsdale are as discussed in the rejection of claim 1 above, and incorporated herein.

As per claim 7, Ragsdale discloses the method wherein the restaurant includes a self-check out and payment processing system that uploads the bill, the method further comprising: capturing by the self-check out and payment processing system, a digital signature from the mobile phone (See Ragsdale, Page 4, Paragraph 0053).

The motivation for combining the respective teachings of Miller and Ragsdale are as discussed in the rejection of claim 1 above, and incorporated herein.

As per claim 8, Ragsdale discloses the method further providing, by the post-dining system a post-dining survey (See Ragsdale, Page 2, Paragraph 0015), collecting, by the post dining system, at least one customer data element from the customer unit via the mobile phone, and storing the customer data element in a database (See Ragsdale, Page 5, Paragraphs 0089-0090).

The motivation for combining the respective teachings of Miller and Ragsdale are as discussed in the rejection of claim 1 above, and incorporated herein.

As per claim 9, Ragsdale discloses the method further comprising: enabling, by the post-dining system the customer unit to pre-purchase an entertainment unit prior to leaving the restaurant via the mobile phone and receive a confirmation of the entertainment unit purchase (See Ragsdale, Page 4, Paragraphs 0053-0054).

The motivation for combining the respective teachings of Miller and Ragsdale are as discussed in the rejection of claim 1 above, and incorporated herein.

As per claim 10, Miller discloses a restaurant customer management system that manages customer data elements (See Miller, Col.5, lines 61-67 to Col.6, line 6), the system comprising: a software program that receives at least one customer request of at least one service from a restaurant from a mobile phone of a customer unit (See Miller, Col.8, lines 53-67 to Col.9, line 8).

Miller does not explicitly disclose that the restaurant having a restaurant pre-dining system that logs in the customer unit that issues the customer request and pages the mobile phone thereby notifying the customer unit that a table is ready for the customer unit; a dining system that sends an interactive restaurant menu to the mobile phone; a customer managed post-dining system that uploads a bill for the at least one service from a point of sale system of the restaurant to the mobile phone and performs a customer self-check out and payment processing whereby payment for the at least one service is submitted by the customer unit via the mobile phone to the point of sale system.

However, these features are known in the art, as evidenced by Ragsdale. In particular, Ragsdale suggests that the restaurant having a restaurant pre-dining system that logs in the customer unit that issues the customer request and pages the mobile phone thereby notifying the customer unit that a table is ready for the customer unit (See Ragsdale, Page 5; Paragraphs 0089-0090); a dining system that sends an

interactive restaurant menu to the mobile phone (See Ragsdale, Page 5; Paragraphs 0089-0090); a customer managed post-dining system that uploads a bill for the at least one service from appoint of sale system of the restaurant to the mobile phone and performs a customer self-check out and payment processing whereby payment for the at least one service is submitted by the customer unit via the mobile phone to the point of sale system (See Ragsdale, Page 4, Paragraph 0053; Page 4, Paragraph 0054).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the features of Ragsdale within the system of Miller with the motivation of providing a wireless maitre d' system and method which allows interactive two-way communication to selective restaurant personnel for expeditiously receiving, filling and finalizing patron orders in and outside of restaurants (See Ragsdale, Page 2, Paragraph 0016).

As per claim 11, Ragsdale discloses the restaurant customer management system further comprising a database, a digital receipt is stored in the database (See Ragsdale, Page 4, Paragraph 0053).

As per claim 12, Ragsdale discloses the restaurant customer management system wherein the customer unit is provided a graphical user interface for selection of a gratuity on the mobile phone (See Ragsdale, Page 4, Paragraphs 0046-0047).

The motivation for combining the respective teachings of Miller and Ragsdale are as discussed in the rejection of claim 1 above, and incorporated herein.

As per claim 13, Ragsdale discloses the restaurant customer management system further comprising an electronic repository that stores a customer data element comprising an online payment service provider account number (See Ragsdale, Page 4, Paragraph 0053).

The motivation for combining the respective teachings of Miller and Ragsdale are as discussed in the rejection of claim 1 above, and incorporated herein.

As per claim 14, Ragsdale discloses the restaurant customer system wherein the restaurant is a cafeteria establishment further comprising: a customer managed payment system implemented as a computer having a graphical user interface that allows a customer unit to identify cafeteria items selected and pay for the items (See Ragsdale, Page 5, Paragraph 0069).

The motivation for combining the respective teachings of Miller and Ragsdale are as discussed in the rejection of claim 1 above, and incorporated herein.

As per claim 15, Ragsdale discloses the restaurant customer method wherein the cafeteria selection act occurs when a customer unit takes a food or beverage items from a cafeteria countertop (See Ragsdale, Page 4, Paragraphs 0047-0051).

The motivation for combining the respective teachings of Miller and Ragsdale are as discussed in the rejection of claim 1 above, and incorporated herein.

As per claim 17, Ragsdale discloses the restaurant customer management system submission of payment is facilitated by an RFID card (See Ragsdale, Page 1, Paragraph 0011).

The motivation for combining the respective teachings of Miller and Ragsdale are as discussed in the rejection of claim 1 above, and incorporated herein.

4. Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al (6,844,893) in view of Nielsen et al.(6,848,613).

As per claim 18, Miller discloses a method of identifying a person associated with a restaurant menu item (See Miller, Col.8, lines 7-24).

Miller does not explicitly disclose that the method having splitting a customer bill on a terminal device comprising: identifying a number of people at a table; splitting at least one restaurant item between at least two people; monitoring a bill balance; splitting the bill balance into at least two bills each respectively associated with one of the people at the table; and closing the at least two bills each of the associated people at the table.

However, these features are known in the art, as evidenced by Nielsen. In particular, Nielsen suggests that the method having splitting a customer bill on a terminal device comprising: identifying a number of people at a table (See Nielsen,

Col.20, lines 30-64); splitting at least one restaurant item between at least two people (See Nielsen, Col.20, lines 35-39); monitoring a bill balance (See Nielsen, Fig.5; Col.20, lines 48-64); splitting the bill balance into at least two bills each respectively associated with one of the people at the table (See Nielsen, Col.20, lines 35-56); and closing the at least two bills each of the associated people at the table (See Nielsen, Col.20, lines 35-64).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the features of Nielsen within the system of Miller with the motivation of improving authorization process for electronic payment transactions, which incorporate gratuity payments, can be achieved simply by determining the total amount that is to be paid electronically prior to obtaining authorization for a transaction from an acquirer (See Nielsen, Col.4, lines 10-15).

As per claim 19, Nielsen discloses the method of splitting a customer bill on a terminal device wherein identifying a person associated with a restaurant menu item is accomplished by a customer manipulating a software system graphical user interface on a terminal device (See Nielsen, Col.15, lines 16-25).

The motivation for combining the respective teachings of Miller and Nielsen are as discussed in the rejection of claim 18 above, and incorporated herein.

As per claim 20, Nielsen discloses a method of splitting a customer bill on a terminal device wherein closing at least two bills (See Nielsen, Col.20, lines 35- 52)

comprises: tracking, by a restaurant customer management system, a customer data element, and storing a customer data element (See Nielsen, Col.19, lines 7-31); running, by a terminal device having an operating system a graphical user interface software, digital signature capture software, and payment processing software (See Nielsen, Col.19, lines 57-67); and printing by a printer, a customer receipt (See Nielsen, Col.20, lines 53-64).

Response to Arguments

6. Applicant's arguments filed on 10/30/08 with respect to claims 1-2, 4-15 and 17-20 have been considered but they are not persuasive.

(A) At pages 9-15 of the 10/30/08 response, Applicant argues the followings:

(i) The references are defective in establishing a prima facie case of obviousness with respect to claim 1.

(ii) Neither Miller nor Nielsen teaches a method of identifying a person associated with a restaurant menu item as is claimed in claim 18.

(B) With respect to Applicant's first and second arguments, it is respectfully submitted that obviousness is determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); *In re Hedges*, 783 F.2d 1038, 1039, 228 USPQ 685,686 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785,788 (Fed. Cir. 1984); and *In re Rinehart*, 531 F.2d 1048, 1052, 189 USPQ 143,147

(CCPA 1976). Using this standard, the Examiner respectfully submits that he has at least satisfied the burden of presenting a prima facie case of obviousness, since he has presented evidence of corresponding claim elements in the prior art and has expressly articulated the combinations and the motivations for combinations that fairly suggest Applicant's claimed invention.

Rather, Applicant does not point to any specific distinction(s) between the features disclosed in the references and the features that are presently claimed. In particular, 37 CFR 1.11 (b) states, "A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the reference does not comply with the requirements of this section." Applicant has failed to specifically point out how the language of the claims patentably distinguishes them from the applied references. Also, arguments or conclusions of Attorney cannot take the place of evidence. In re Cole, 51 CCPA 919, 326 F.2d 769, 140 USPQ 230 (1964); In re Schulze, 52 CCPA 1422, 346 F.2d 600, 145 USPQ 716 (1965); Mertznerv. Mindick, 549 F.2d 775, 193 USPQ 17 (CCPA 1977). In addition, the Examiner recognizes that references cannot be arbitrarily altered or modified and that there must be some reason why one skilled in the art would be motivated to make the proposed modifications. However, although the Examiner agrees that the motivation or suggestion to make modifications must be articulated, it is respectfully contended that there is no requirement that the motivation to make modifications must be expressly articulated within the references themselves. References are evaluated by what they suggest to one versed in the art, rather than by

their specific disclosures, *In re Bozek*, 163 USPQ 545 (CCPA 1969).

The Examiner is concerned that Applicant apparently ignores the mandate of the numerous court decisions supporting the position given above. The issue of obviousness is not determined by what the references expressly state but by what they would reasonably suggest to one of ordinary skill in the art, as supported by decisions in *In re DeLisle* 406 Fed 1326, 160 USPQ 806; *In re Kell, Terry and Davies* 208 USPQ 871; and *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ 2d 1596, 1598 (Fed. Cir. 1988) (citing *In re Lalu*, 747 F.2d 703, 705, 223 USPQ 1257, 1258 (Fed. Cir. 1988)). Further, it was determined in *In re Lamberti et al*, 192 USPQ 278 (CCPA) that:

- (i) obviousness does not require absolute predictability;
- (ii) non-preferred embodiments of prior art must also be considered; and
- (iii) the question is not express teaching of references, but what they would suggest.

Therefore, Applicant's argument is not persuasive and the rejection is hereby sustained.

7. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not the applied art teaches multi-function customer satisfaction survey device (6,960,988), planar means for indicating a gratuity as a function (6,019,393), and systems and methods for utilizing a point-of-sale system (2002/0156683).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vanel Frenel whose telephone number is 571-272-6769. The examiner can normally be reached on 6:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew S. Gart can be reached on 571-272-3955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call

Application/Control Number: 10/642,841

Page 15

Art Unit: 3687

800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vanel Frenel/

Examiner, Art Unit 3687

January 23, 2009

/Matthew S Gart/

Supervisory Patent Examiner, Art Unit 3687